

Message Text

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C - SONNENFELDT
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EUR/SOV:JFMATLOCK
S/S - MR. LUERS
S - MR. GOMPERT

----- 014059

P R 090321Z AUG 74
FM SECSTATE WASHDC
TO AMEMBASSY MOSCOW PRIORITY
INFO AMCONSUL LENINGRAD

C O N F I D E N T I A L STATE 173825

E.O. 11652: GDS
TAGS: PFOR, CASC (KUDIRKA, SIMAS) UR, US
SUBJECT: CONSULAR ACCESS TO KUDIRKA
REF: STATE 163015; MOSCOW 11552 AND PREVIOUS

1. SINCE THREE WEEKS HAVE ELAPSED SINCE PRESENTATION TO

MFA OF EMBASSY'S JULY 18 NOTE REQUESTING CONSULAR ACCESS
TO KUDIRKA, DEPARTMENT BELIEVES EMBASSY, PREFERABLY AT
DCM LEVEL, SHOULD MAKE STRONG DEMARCHE TO HEAD OF MFA'S
USA DIVISION ON KUDIRKA CASE ON AUGUST 9 OR AS SOON THERE-
AFTER AS POSSIBLE.

2. FOLLOWING POINTS SHOULD BE EMPHASIZED TO SOVIETS:

A. OVER THREE WEEKS HAVE ELAPSED SINCE THE EMBASSY PRE-
SENTED THE MFA'S CONSULAR DIVISION WITH A NOTE REQUESTING
CONSULAR ACCESS TO SIMAS KUDIRKA, WHO HAD BEEN FOUND TO
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BE A US CITIZEN UNDER APPLICABLE US LAWS. WE HAVE SINCE

HAD NO OFFICIAL RESPONSE FROM THE SOVIET GOVERNMENT.

B. THIS MATTER INVOLVES A QUESTION OF PRINCIPLE WHICH TRANSCENDS OUR CONCERN FOR THE INDIVIDUAL, IMPORTANT AS THAT IS ON ITS OWN MERITS. AT THIS STAGE IN OUR BILATERAL RELATIONS IT IS ESSENTIAL THAT ALL AGREEMENTS WE HAVE CONCLUDED BE FULLY AND FAITHFULLY ADHERED TO.

C. ARTICLE 12, PARAGRAPH THREE OF THE CONSULAR CONVENTION SPECIFIES THAT "A CONSULAR OFFICER OF THE SENDING STATE SHALL HAVE THE RIGHT WITHOUT DELAY TO VISIT AND COMMUNICATE WITH A NATIONAL OF THE SENDING STATE WHO IS UNDER ARREST OR OTHERWISE DETAINED IN CUSTODY OR IS SERVING A SENTENCE OF IMPRISONMENT." IN OUR VIEW, THIS PROVISION OF THE CONVENTION IS NOT CONSISTENT WITH THE THREE-WEEK DELAY BY THE SOVIET GOVERNMENT IN ARRANGING CONSULAR ACCESS TO MR. KUDIRKA AS REQUESTED BY THE EMBASSY ON JULY 18.

D. AS THE SOVIETS MUST KNOW, THIS CASE IS A MATTER OF PERSONAL CONCERN TO THE SECRETARY OF STATE AS WELL AS TO A NUMBER OF LEADING SENATORS AND CONGRESSMEN. FURTHER DELAY ON THE QUESTION OF CONSULAR ACCESS COULD BE ACUTELY EMBARRASSING TO BOTH OUR GOVERNMENTS SINCE IT COULD LEAD OUR CONGRESS AND PUBLIC TO QUESTION THE EFFICACY OF THE CONSULAR CONVENTION.

E. WE RECOGNIZE THE SOVIET UNION'S SOVEREIGN RIGHT UNDER INTERNATIONAL LAW TO CONSIDER MR. KUDIRKA A SOVIET CITIZEN. WE ARE NOT QUESTIONING HIS STATUS UNDER SOVIET LAW. BY THE SAME TOKEN, WE TRUST THE SOVIET GOVERNMENT RECOGNIZES OUR SOVEREIGN RIGHT TO DETERMINE MATTERS OF US CITIZENSHIP. THIS WE HAVE DONE IN THE KUDIRKA CASE, AND HE HAS BEEN FOUND TO BE AN AMERICAN CITIZEN IN ACCORD WITH US LAW.

F. IN VIEW OF THE ABOVE CONSIDERATIONS, WE FEEL COMPELLED TO CALL THIS MATTER TO THE ATTENTION OF THE USA DIVISION AND URGE CONSULAR ACCESS TO MR. KUDIRKA BE ARRANGED WITHOUT FURTHER DELAY. KISSINGER
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